



**THE ATTORNEY GENERAL  
OF TEXAS**

**AUSTIN 11, TEXAS**

**JOHN BEN SHEPPERD  
ATTORNEY GENERAL**

March 5, 1953

Hon. Allan Shivers  
Governor of Texas  
Capitol Station  
Austin, Texas

Letter Opinion No. MS-07

Re: Constitutionality of House Bill  
310, authorizing an election for  
the purpose of creating a county-  
wide school equalization fund in  
certain counties.

Dear Sir:

You have requested the opinion of this office concerning the constitutionality of House Bill 310 of the 53rd Legislature. Section 1 of this bill provides in part:

"Upon a petition duly signed and verified by the tax rolls of the county, of twenty-five (25) qualified voters, of any county in this State having a population of not more than twenty-eight thousand (28,000) according to the last preceding Federal Census, and having a total assessed valuation of not less than Forty-five Million Dollars (\$45,000,000) and in which said county there are not less than six thousand two hundred (6,200) scholastics enumerated on the scholastic census rolls, the County Judge shall immediately order an election to be held within thirty (30) days thereafter to determine whether there shall annually thereafter be levied within said county a tax not to exceed twenty-five cents (25¢) on the One Hundred Dollars (\$100) valuation of the taxable property within the county, . . ."

Section 56 of Article III of the Constitution of Texas provides in part:

"The Legislature shall not, except as otherwise provided in this Constitution, pass any local or special law . . .

"Regulating the affairs of counties . . .  
school districts . . .

"And in all other cases where a general law can be made applicable, no local or special law

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shall be enacted . . ."

This bill as written is only applicable to Jim Wells County.

In Rodriguez v. Gonzales, 148 Tex. 537, 227 S.W.2d 791, 793 (1950) the court said:

"The primary purpose back of the adoption of this section was to secure that uniformity in the application of law which is essential to an ordered society. The section is not of doubtful construction, but is a plain mandate from the people to the Legislature. The prohibition is against any 'local or special law.' . . . The primary and ultimate test of whether a law is general or special is whether there is a reasonable basis for the classification made by the law, and whether the law operates equally on all within the class. Bexar County v. Tynan, 128 Tex. 223, 97 S.W.2d 467; Miller v. El Paso County, 136 Tex. 370, 150 S.W.2d 1000; 1 Sutherland (2nd Ed.), Statutory Construction, Sec. 203. If the classification made by the law 'is not based upon a reasonable and substantial difference in kind, situation or circumstance bearing a proper relation to the purpose of the statute,' it is a special law. 50 Am.Jur., Statutes, Sec. 7."

In Wood v. Marfa I.S.D., 123 S.W.2d 429 (Tex.Civ.App. 1938) reversed on other grounds, 135 Tex. 223, 141 S.W.2d 590 (1940), the court had before it then an act applicable to only one county, which fact the court judicially noted. The court held that the Legislature did not make a classification based upon a real distinction and that act was unconstitutional.

Also see Oakley v. Kent, 181 S.W.2d 919 (Tex.Civ.App. 1944) and Smith v. State, 49 S.W.2d 739 (Tex.Crim. 1932).

The Attorneys General have consistently held unconstitutional bracket legislation of the type similar to House Bill 310. Att'y Gen. Ops. O-2221 (1940); O-5326 (1943); Letter Opinion to Hon. Allan Shivers, Governor, dated April 24, 1951; Letter Opinion to Hon. Allan Shivers, Governor, dated April 30, 1951; Letter Opinion to Hon. Allan Shivers, Governor, dated May 8, 1951. Classification in House Bill 310 purports to be

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in the form of a general law but is in substance and fact a special and local law. The purpose of the legislation is to single out one county and to legislate on its taxing program. There is no reason why a law should apply to this particular county and not to other counties with fewer population, or greater population, or less valuation, or fewer scholastics. The population brackets and the other brackets in House Bill 310 afford no fair or reasonable basis for the classification with relation to the tax law.

The classification or designation contained in House Bill 310 makes it a local or special law in violation of Section 56 of Article III of the Constitution of Texas, and it is therefore our opinion that this Act is unconstitutional.

Yours very truly,

JOHN BEN SHEPPERD  
Attorney General

By  
Billy E. Lee  
Assistant

BEL:am:wb